

1986 Informal Guidance
controlling SDWA 1423(c)(3)
Compliance Only Hearings

5. A new Subpart H is added to Part 144 to read as follows:

Subpart H - Procedures for UIC Administrative Orders
Which Do Not Assess Penalties
Sec.

144.101 Purpose.

144.102 Initiation of action.

144.103 Opportunity for informal hearing.

144.104 Availability of the administrative record.

144.105 Conduct of informal hearings.

144.106 Decision of the Administrator.

144.107 Issuance of order.

144.108 Effective date of order.

§144.101 Purpose.

This Part describes procedures for the notice and opportunity for informal hearing and issuance of administrative orders which do not assess a penalty, (hereinafter, referred to as "administrative compliance orders") under §1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300h-2(c).

§144.102 Initiation of action.

(a) If the Administrator finds that respondent has violated Part C of the SDWA or any provision of its implementing regulations, the Administrator may prepare a proposed administrative compliance order proposing that the respondent comply with the regulation, schedule,

or other requirement of Part C that is alleged to have been violated. Any such proposed administrative compliance order shall state with reasonable specificity the nature of the violation, and may specify a reasonable time for compliance with applicable requirements and a schedule for achieving such compliance.

(b) The Administrator shall give public notice of the proposed administrative compliance order in the form and manner set forth 40 C.F.R. §144.82(b), (c) and (d), disregarding those provisions in 40 C.F.R. §144.82(d) which pertain to penalties.

§144.103 Opportunity for informal hearing.

The Administrator shall provide the respondent an opportunity for an informal hearing on any proposed administrative compliance order by stating in a letter accompanying each proposed administrative compliance order that the hearing shall be convened if the respondent sends written notice of such request to the Administrator within 30 days of the date the proposed administrative order is noticed under §144.102. The Administrator may extend the time allowed for submitting hearing requests for good cause.

§144.104 Availability of the administrative record.

At any time after public notice of a proposed order is given under §144.102(b), the administrative record

shall be available at reasonable times for inspection and copying by any interested person, subject to provisions of law restricting the public disclosure of confidential information. The requester may be required to pay reasonable charges for copies.

§144.105 Conduct of informal hearings.

(a) The Administrator shall convene the hearing upon request according to §144.103 after giving written notice of the time and place of the hearing to the respondent and to any person who commented on the proposed administrative compliance order under §144.102(b), for the purpose of determining whether a proposed administrative compliance order (1) has correctly determined the extent and nature of a respondent's violation of any regulation, schedule, or other requirement of Part C of SDWA and (2) has provided, where appropriate, a reasonable time for the respondent to comply with applicable requirements of the SDWA and its implementing regulations. Upon convening the hearing under this subsection, the Administrator shall appoint a Hearing Officer. Any person who commented on the proposed order under §144.102(b) may participate in the hearing under this Subpart.

(b) The Hearing Officer shall preside over the hearing convened under this section. The Hearing Officer shall determine the forms and procedures of the hearing,

and shall maintain a complete and accurate record of the proceedings. The Hearing Officer may maintain this record in written or other permanent form, and shall make this record part of the administrative record. The Hearing Officer shall provide the Administrator with the record of any hearing conducted under this section.

(c) The respondent, or any member of the public may present information to the Hearing Officer at the hearing (or to the Administrator in writing before the date set for the hearing) bearing on the questions of whether (1) the respondent has violated the applicable regulation, schedule, or other requirement referenced in the proposed administrative compliance order; (2) the respondent has violated any other applicable regulation, schedule, or other requirement of Part C of SDWA; and (3) the proposed order, where appropriate, provides a reasonable time for the respondent to comply with applicable requirements of the SDWA and its implementing regulations. All information presented shall become part of the administrative record.

§144.106 Decision of the Administrator.

(a) Within a reasonable time following completion of the hearing, if any, the Administrator shall withdraw, issue, or modify and issue the proposed order. The

Administrator's decision shall be based on substantial evidence in the administrative record, shall be in writing, shall include a clear and concise statement of reasons, and shall include any final order. The administrator's issuance shall constitute final agency action for purposes of judicial review.

(b) The Administrator shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to the respondent and every person who submitted written comments on the proposed order or who participated in the hearing.

(c) The decision shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review.

§144.107 Issuance of order.

(a) If no hearing is held under §144.105, the Administrator shall consider all public comments received, if any, shall promptly withdraw, issue, or modify and issue the final order by sending the order, or written notice of its withdrawal, to the respondent by certified mail. The Administrator shall provide notice of the decision to all persons who submitted comments. Issuance of the order under this subparagraph constitutes final agency action for purposes of judicial review.

(b) If a hearing is held under this subpart, issuance or withdrawal shall occur on the date that the

notice referenced in §144.106(b) is sent and final agency action for purposes of judicial review shall occur as provided in §144.106(a).

§144.108 Effective date of order.

Any order issued under this subpart shall become effective 30 days following its issuance unless a appeal is taken pursuant to §1423(c)(6) of SDWA, 42 U.S.C. §300h-2(c)(6).

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(b) The Hearing Officer shall preside over the hearing convened under this section. The Hearing Officer shall determine the forms and procedures of the hearing,

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(c) The respondent, or any member of the public may present information to the Hearing Officer at the hearing (or to the Administrator in writing before the date set for the hearing) bearing on the questions of whether (1) the respondent has violated the applicable regulation, schedule, or other requirement referenced in the proposed administrative compliance order; (2) the respondent has violated any other applicable regulation, schedule, or other requirement of Part C of SDWA; and (3) the proposed order, where appropriate, provides a reasonable time for the respondent to comply with applicable requirements of the SDWA and its implementing regulations. All information presented shall become part of the administrative record.

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